

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO. BAR-87-1

BOARD OF OVERSEERS OF THE BAR)

v.)

JEFFREY PICKERING)

Former Bar No. 1644)

STIPULATION AND ORDER

This matter is before the Court on Mr. Pickering's Petition for Reinstatement filed pursuant to Maine Bar Rule 7.3(j). Bar Counsel J. Scott Davis, Esquire, represents the Board of Overseers of the Bar ("the Board") and Malcolm L. Lyons, Esquire represents the Petitioner, Mr. Pickering. The parties, by and through their counsel, have entered into the Stipulation set out below, and based on that Stipulation, this Court grants Petitioner Pickering's Petition on the conditions and terms set forth herein.

STIPULATION

The parties stipulate to the following:

1. By Order of April 18, 1986, Attorney Mr. Pickering was suspended indefinitely from practice for violations of Maine Bar Rules 3.2(f)(3), 3.6(a)(3), 3.6(f)(2)(iv), and 3.7(b). Subsequently, by Order of April 24, 1987 from Justice Daniel E. Wathen, Mr. Pickering's resignation from the Bar was accepted.

2. On August 2, 2001, approximately fifteen (15) years from the date of suspension and fourteen (14) years from the Court's acceptance of his resignation, Mr. Pickering filed his Petition for Reinstatement. That Petition is still pending before this Court.

3. As provided in Bar Rule 7.3(j)(5), Bar Counsel informed Attorney Lyons that he would oppose the reinstatement, and on February 5, 2002, a hearing was held before Panel A of the Grievance Commission. Based upon the entire evidence presented, Bar Counsel then agreed Mr. Pickering had met his burden of proof, and agreed to recommend his reinstatement subject to specific conditions. After brief deliberation, the Panel voted unanimously to recommend that the Court reinstate Mr. Pickering.

4. On February 12, 2002, the Board of Overseers of the Bar unanimously voted to adopt Panel A's recommendation for Mr. Pickering's reinstatement subject to specific conditions, set out in the order below.

5. Due to subsequent intervening events, under M.Bar R. 7.3(j)(5)(B) this Court conducted a testimonial hearing on June 17, 2002 to hear evidence whether Mr. Pickering had engaged in the unauthorized practice of law since being employed as of July 2001 as a paralegal by Brian Swales, Esquire. Based upon the evidence presented, the Court is satisfied that Mr. Pickering has not engaged in the unauthorized practice of law, and properly acted as a paralegal in that employment.

ORDER

Based on the recommendation of the Board of Overseers of the Bar that Petitioner Mr. Pickering be reinstated to the Bar and be admitted to practice law in the State of Maine, this Court orders, adjudges and decrees as follows:

1. Subject to the terms and conditions set out below, Mr. Pickering is hereby reinstated to the Bar and permitted to practice law in the State of Maine.

2. As a condition of Mr. Pickering's reinstatement, he shall continue to study and refamiliarize himself with the areas of law in which he intends to practice by spending at least ten (10) hours per week for ten (10) weeks reading and studying the rules of court, statutes, and cases.

3. Every two weeks, Mr. Pickering shall sign and send to Bar Counsel for his review and approval an Affidavit attesting to the fact that he has studied

the law for at least ten (10) hours per week during each of the previous two weeks. The affidavit shall list the specific areas of law Mr. Pickering has studied. At the end of the 10th week, once Mr. Pickering has sent Bar Counsel his final affidavit, Bar Counsel shall report to the Court whether Mr. Pickering has satisfactorily fulfilled this condition.

4. For a period of one year from this date, Mr. Pickering's practice of law shall be monitored by Michael E. Carpenter, Esquire.

5. Within 30 days of this date Mr. Carpenter will meet with Mr. Pickering to review whether Mr. Pickering has opened an appropriate client's account, has in place a system to identify potential conflicts and to calendar various deadlines, including statutes of limitations, and otherwise is prepared to accept clients. Thereafter, Mr. Carpenter will consult by telephone with Mr. Pickering at least once each month, and more often if circumstances require and meet personally at least every six weeks, to confirm that each of these office management systems remains in place and is properly functioning, and to offer such other suggestions or observations as may be helpful for Mr. Pickering to meet the needs of his clients and comply with this order and the Bar Rules.

6. In advance of each such telephone conference or meeting Mr. Pickering shall prepare and send to Mr. Carpenter a written report setting out the current status of all pending matters in which he has been retained as counsel. For each matter the report shall briefly outline what activity has occurred in the preceding month and what activity is anticipated for the upcoming month.

7. Mr. Carpenter, who is a volunteer and will receive no compensation for his service, shall have the right to withdraw and terminate his service as a monitor at any time for any reason, including the reasons set forth in Paragraph 8 below. In the event Mr. Carpenter terminates his services, he shall so notify Bar Counsel, and the Court, and Mr. Pickering shall cooperate in obtaining the service of a replacement monitor who, once appointed by the Court, will serve on the same terms and conditions as Mr. Carpenter.

8. If any aspect of the monitoring procedure creates a situation which is, or might be interpreted to be a conflict of interest under the Maine Bar Rules (for example if Mr. Pickering is or becomes opposing counsel concerning a matter involving Mr. Carpenter), then Mr. Carpenter may adopt any one of the following courses with the proposed result:

(a). Mr. Carpenter shall cease to act as Monitor and a potential conflict is avoided;

(b). Mr. Carpenter shall continue to act as Monitor but totally exclude Mr. Pickering's client and matter in question from the monitoring process, so that no conflict is deemed to exist; or

(c). Mr. Pickering shall obtain successor counsel for his client and withdraw from the matter.

9.If in Mr. Carpenter's judgment it is appropriate, he shall have the right to contact clerks of court, judges or opposing counsel to determine the accuracy of Mr. Pickering's reports to him.

10. Mr. Carpenter shall have no contact with Mr. Pickering's clients and his only contact in the performance of his duties shall be with Mr. Pickering or other persons contemplated by this order. Moreover, Mr. Carpenter's participation in the monitoring of Mr. Pickering's practice shall be deemed not to create an attorney-client relationship between Mr. Carpenter and Mr. Pickering or between Mr. Carpenter and any of Mr. Pickering's clients. However, all communications between Mr. Pickering and Mr. Carpenter that pertain to any of Mr. Pickering's clients shall be deemed communications between a lawyer and a lawyer's representative and, therefore, are subject to and protected by the attorney /client privilege as provided in Evidence Rule 502 and Maine Bar Rule 3.6(h).

11. Every four months Mr. Carpenter shall file a confidential report with the Court and provide copies of the report to Bar Counsel and Mr. Pickering. The report shall describe the nature and extent of any professional assistance Mr. Carpenter has provided to Mr. Pickering.

12. Mr. Carpenter will have a duty to report to Bar Counsel and the Court any apparent or actual professional misconduct by Mr. Pickering which Mr. Carpenter becomes aware of or any lack of cooperation by Mr. Pickering in the performance of this order.

13. If at any time for a period of one year from this date Bar Counsel learns or has reason to believe or receives any complaint that Mr. Pickering has or is failing to fulfill any of the conditions of this Order or has otherwise failed to comply with or abide by the Bar Rules, then Bar Counsel may file directly with this Court and serve on Mr. Pickering a Motion that sets forth the facts that Bar Counsel believes constitute a violation of this Order or the Bar Rules. This Court will then schedule and conduct an appropriate evidentiary hearing to determine whether Mr. Pickering has, in fact, violated the terms of this Order or failed to abide by the Bar Rules. If, after the hearing, the Court concludes that Mr. Pickering has violated this Order or the Bar Rules, the Court may then enter, on such terms and conditions as it deems appropriate, an Order which may, among

other things, include a provision that revokes Mr. Pickering's privilege to practice law by disbarment, suspension or by restoring his resignation.

14. If Mr. Pickering satisfactorily fulfills the terms and conditions of this Order and no new allegations of misconduct are brought to the Court's attention within one year of this date, then the services of the Monitor shall, without further Order of the Court, be discharged and Mr. Pickering shall be allowed to practice law in the State of Maine without supervision or further monitoring.

15. Mr. Pickering shall continue to completely abstain from the use of intoxicating liquor.

16. Mr. Pickering shall establish a relationship with the substance abuse committee of the Maine Bar Association, an organization which is also known as Lawyers Concerned For Lawyers, or any successor entity.

17. Restitution shall be made by Mr. Pickering within two (2) years of reinstatement to two his former clients, Thomas Grossi in the amount of \$1,000.00, and Linwood Doak in the amount of \$325.00, plus interest since 1986 in both cases.

Dated: June 25, 2002

_____/s/_____
Howard H. Dana, Jr., Associate Justice
Maine Supreme Judicial Court